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14 **UNITED STATES DISTRICT COURT**

15 **DISTRICT OF NEVADA**

16 TRUMP RUFFIN COMMERCIAL LLC, and
17 TRUMP RUFFIN TOWER I LLC,

18 Plaintiff,

19 vs.

20 LOCAL JOINT EXECUTIVE BOARD LAS
21 VEGAS, CULINARY WORKERS UNION
22 LOCAL 226, and BARTENDERS UNION
23 LOCAL 165,

24 Defendants.

CASE NO. 2:15-cv-01984-GMN-GWF

**DEFENDANTS' MOTION TO DISMISS
THE COMPLAINT [FRCP 12(b)(6)]**

Defendants Local Joint Executive Board of Las Vegas, Culinary Workers Union Local 226 and Bartenders Union Local 165 move to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) and (1). The Complaint fails to state a claim for violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), because (1) Plaintiffs do not have standing under Section 43(a)(1)(B) to pursue a false advertising claim against Defendants; (2) Plaintiffs have not, and cannot, allege that the misleading statement was made “in commercial advertising or promotion”; (3) the statements in the allegedly misleading flyer published by Defendants are not actionable under Section 43(a)(1)(B). The Complaint fails to state a claim for violation of the Nevada Deceptive Trade Practices Act, NRS 598.0903 *et seq.* because the factual allegations do not amount to a violation and because the speech at issue was not commercial speech. In the alternative, the Court should refrain from exercising supplemental jurisdiction over the state law claim. This Motion is based on the supporting memorandum and the pleadings and papers filed herein.

DATE: November 30, 2015

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/s/ Kristin L. Martin

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